In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 15, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MEMORANDUM FOR THE UNITED STATES ON MAINTENANCE OF STATUS QUO

Responding to the invitation of the Court for an expression of views, the United States submits that it is most important that the development of the submerged coastal lands continue without interruption during the period of litigation in this Court, under an agreement of the parties to escrow receipts, if possible, but that it continue in any event. It would be highly desirable for the United States and Louisiana to enter into a stipulation under which bonuses, royalties, and all other funds received from leasing lands in the disputed area should be held in a fund for later division between the parties in accordance with the decision of this case on its merits. In

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the absence of such an agreement, the United States does not believe that the area can be allowed to lie idle without great damage to the public welfare and to lessees who have invested hundreds of millions; the parties should proceed to lease the properties and collect royalties as best they can, awaiting the outcome of the suit to determine the appropriate distribution of the proceeds.

The total area in dispute comprises nearly 5,000,000 acres extending along the entire coast of the State of Louisiana. In addition to the instant dispute over whether Louisiana's marginal belt is three miles or three leagues in width, there is disagreement on the location of the base line from which the belt is measured. The base line for the marginal sea lies along the outer limit of inland waters and Louisiana claims as inland waters vast stretches which the United States believes to be open sea, so that Louisiana builds its three league claim on the foundation of an inland water claim that extends far into the Gulf of Mexico. This disputed area is the potential source of millions of barrels of oil and comparable quantities of gas which are highly important to the Nation's reserves.[1] It has been the scene of widespread geophysical exploration and extensive drilling. Over 22,310 barrels of petroleum and 246,872,000 cubic feet of natural

[1] 16,627,000 barrels of oil and 240,000,000,000 cubic feet of gas have already been withdrawn. There are also very large deposits of sulphur.

gas are being produced daily in the area. The United States has confirmed leases previously issued by Louisiana covering 855,650 acres in the disputed area and has issued new leases on 177,830 acres in this area, over 1,000,000 acres in all on which 456 wells have been, or are being, drilled.

In oil and gas production it is not practicable, without incurring great loss, to shut down operations entirely or to interrupt the development of a productive area. If closed down, producing wells may sand up and lose their capacity to produce. Investment in wells being drilled may be lost if the drilling is interrupted.[2] By their terms leases which were acquired after extensive geophysical exploration and by the payment of large bonuses will expire unless they are developed. It is not possible to permit production of oil from one lease and at the same time to hold adjoining areas for later development without causing oil to be drained from the undeveloped lands. What is more a lessee, having determined that a structure is favorable for drilling, hesitates to drill if it cannot acquire adjacent properties since his drilling will tend to prove the entire structure and redound to the benefit of the adjoining property. Thus development of existing leases would be impeded by the inability

[2] The cost of drilling an exploratory well in the submerged lands area averages about $1,000,000, of a development well, about $600,000.

to lease additional areas. All of these factors make it highly desirable to continue operations in the area with as little interference as is possible. Obviously it would be financially disastrous to existing lessees for their production and drilling activity to be suspended, and the United States as lessor would suffer a part of that loss. The extent of that injury is difficult to estimate but the investment to date in the area amounts to hundreds of millions. Less obvious, but no less real, would be the result of a cessation of leasing. In view of the size of the area and the length of time which may be consumed in litigation, perhaps the most serious injury would be the impairment to the development of adequate national oil reserves. Congress has recognized "the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf" in Section 8 of the Outer Continental Shelf Lands Act (43 U. S. C. Supp. II, 1337 (a)) and vested authority in the Secretary of Interior to promote such activity.

There is precedent for using a stipulation to protect the interests of the contending parties without interrupting actual operations in the field. After this Court's decision in *United States* v. *California,* 332 U. S. 19, a dispute arose between the United States and California as to the extent of the latter's inland waters, which, of course, continued to be subject to leasing by the

state. On July 26, 1947, the United States and California entered into a stipulation to permit the continuation of operations and new drilling and leasing under certain restrictions, but requiring the receipts to be held in escrow. This agreement was extended with certain revisions from year to year while the parties carried on their litigation. After the passage of the Submerged Lands Act and this Court's decision upholding its constitutionality in *Alabama* v. *Texas,* 347 U. S. 272, the United States paid about $22,000,000 to California in 1954.

In September of 1954, after the passage of the Submerged Lands Act of May 22, 1953, and the Outer Continental Shelf Lands Act of August 7, 1953, a meeting was held in Washington attended by the representatives of Louisiana and of the Departments of Justice and Interior. At that time the dispute between Louisiana and the United States had arisen and both Louisiana and the United States were making competing offers for the sale of leases in the same area. It was agreed at this meeting that it was best to avoid the confusion of the competing offerings, and both the State and the United States withdrew the overlapping offerings in the disputed area; a committee was set up to work out an operating program which would permit continued development of the area pending a determination of the location of the boundary. It was then understood that the future leasing should be done by the

Federal Government, if a suitable agreement would be reached, and that the funds resulting from the leasing should be held in escrow. Unfortunately this attempt to reach an agreement with the State failed, the State explaining that it had no authority under its law to permit the funds to be held in escrow.

In the absence of agreement, the Secretary of the Interior proceeded to carry out what he conceived to be his duties under the Outer Continental Shelf Lands Act, offering for lease in July, 1955, properties a portion of which lay in the disputed area. The State then published notice of an offering set for the same day and hour as the Federal offering and including some of the identical properties. After the State failed in an attempt to enjoin the Secretary of Interior in the United States District Court for the District of Columbia, the sales were held. No bids were received by Louisiana on the disputed properties. A large number of the tracts were bid for in the Federal sale and leases were issued therefor. The State has made other attempts to lease in the disputed area, with little success.

Finally the Secretary of Interior made an offering of additional leases on the disputed area, bids to be received on May 15, 1956. It was this sale which Lousiana restrained in the State court action referred to in the motion for an injunction filed by the United States in this Court. Appen-

dix A and B to Motion.[3] As a result of that action the sale has been postponed.

CONCLUSION

The United States submits that any attempt to maintain the status quo by a cessation of production, drilling, or leasing in the disputed area would not only jeopardize the national interest in the development of adequate reserves, but would result in tremendous financial losses to lessees, many of whom originally obtained their leases from the State of Louisiana. Moreover, such drastic action is not necessary. The United States stands ready and willing to enter into an agreement with Louisiana to hold all proceeds of leasing in the disputed area in escrow pending a determination of the case on its merits.

Respectfully submitted,

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JUNE, 1956.

[3] It should be particularly noted that the restraining order issued by the State court goes further than maintaining the status quo. It also restrains operations in that area under existing leases, both the State leases which were confirmed and became federal leases under the Outer Continental Shelf Lands Act and the new federal leases sold in 1955. Most of the area now under development was originally leased by Louisiana (see *supra*).

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v.

STATE OF LOUISIANA

MOTION TO DISMISS, AND DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR INJUNCTION, WITH SUPPORTING BRIEF

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